No. 92-796

In The

Supreme Court of the United States

October Term, 1992

WILLIAM N. ODOM, JR.,

Petitioner,

vs.

GEORGE T. LEWIS, CHARLES G. BLACK, J.J. HENRY, JOHN C. ROBERTSON, MICHAEL B. VAUGHN, RUBY I. MILLER, LILLIAN V. WALLS, SHELBY COUNTY GOVERNMENT, and STATE OF TENNESSEE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION FOR RESPONDENT CHARLES G. BLACK

GEORGE S. PETKOFF
Counsel of Record
FRED E. JONES, JR.
PETKOFF AND LANCASTER
Attorneys for Respondent Charles G. Black
Suite 201
305 Washington Avenue
Memphis, Tennessee 38103
(901) 523-1050

2809
Lutz Appellate Services, inc.
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21

QUESTIONS PRESENTED FOR REVIEW

1. Should the Court review questions presented for review by the petitioner which were not presented before the Court of Appeals for the Sixth Circuit?

2. Did the court below err in dismissing petitioner Odom's *pro se* complaint for his failure to state a claim, because the petitioner failed to plead specific factual allegations tending to show that respondent Black conspired with others alleged to have been acting under color of state law for the purpose of denying petitioner Odom's civil rights?

3. Did the court below err in determining that the petitioner Odom's claims were barred by the applicable State of Tennessee statute of limitation?

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II. The court below did not err in dismissing petitioner Odom's *pro se* complaint for his failure to state a claim, because the petitioner failed to plead specific factual allegatons tending to show that respondent Black conspired with others alleged to have been acting under color of state law for the purpose of denying petitioner Odom's civil rights. 7

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Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION FOR RESPONDENT CHARLES G. BLACK

OPINIONS BELOW

This petition seeks review of the judgment and order of the United States Court of Appeals for the Sixth Circuit, *William N. Odom, Jr. v. George T. Lewis, et al.*

This petition also seeks review of the judgment and order of the United States District Court for the Western District of

Tennessee, *William N. Odom, Jr. v. George T. Lewis, et al.*, Docket No. 89-2183-TUA.

The District Court dismissed the action due to the petitioner's failure to state a claim in his complaint, because several defendants, including respondent Black, were private citizens and not state actors within the meaning of 42 U.S.C. § 1983, because these state actors were entitled to immunity, and because petitioner's claims were barred by the appropriate State of Tennessee statute of limitations. The Court of Appeals affirmed the judgment of the District Court.

STATUTES INVOLVED

Tenn. Code Ann. § 28-3-104(a) provides as follows:

> *Personal Tort Actions* – (A) Actions for libel, for injuries to the person, false imprisonment, malicious prosecution, criminal conversion, seduction, breach of marriage promise, actions and suits against attorneys for malpractice whether said actions are grounded or based in contract or tort, civil actions for compensatory or punitive damages, or both, brought under the federal civil rights statutes, and actions for statutory penalties shall be commenced within one (1) year after cause of action accrued.

STATEMENT OF THE CASE

Petitioner, William N. Odom, Jr., commenced a *pro se* lawsuit in the United States District Court for the Western District of Tennessee, Western Division, on February 23, 1989 against various defendants, including respondent Charles G. Black [Appendix, *infra*, at page 1a (hereinafter referred to as "__a")]. Petitioner's action against all defendants was commenced

pursuant to 42 U.S.C. §§ 1983, 1985(3), and 1988, and the First, Fourth, Sixth and Fourteenth Amendments to the United States Constitution. Petitioner also invoked pendent jurisdiction of the District Court to hear and decide additional claims arising under state law.

All of the defendants, including respondent, Charles G. Black, filed motions to dismiss for petitioner's failure to state claims against them for which relief could be granted (18a). On October 4, 1991, an order was entered by the District Court granting defendant's motion to dismiss (20a).

Petitioner then filed a notice of appeal to the United States Court of Appeals for the Sixth Circuit. Petitioner then filed an appellant's brief with the Sixth Circuit (25a) (a copy of said brief is included in respondent's appendix to evidence the questions which were presented to the Sixth Circuit). Respondent Charles G. Black filed a brief in response to said appellant's brief, and the petitioner filed a reply brief.

The Sixth Circuit then entered an order on August 10, 1992 affirming the ruling of the District Court (38a).

SUMMARY OF THE RESPONDENT'S ARGUMENT

The petitioner has presented questions to this Court which were not presented to the Sixth Circuit. Therefore, these new questions should not be considered by this Court.

The petitioner's complaint is devoid of any specific factual allegations to show that the respondent was engaged in a conspiracy to deprive the petitioner of his civil rights.

Petitioner's cause of action is barred by the applicable State of Tennessee statute of limitations, *i.e.*, Tenn. Code Ann. § 28-3-104(a).

REASONS FOR DENYING THE WRIT

I.

THE COURT SHOULD NOT REVIEW QUESTIONS PRESENTED FOR REVIEW BY THE PETITIONER WHICH WERE NOT PRESENTED BEFORE THE COURT OF APPEALS FOR THE SIXTH CIRCUIT.

In his brief filed with the Court of Appeals Sixth Circuit (26a), the petitioner presented five questions for review.

> (1) Did the District Court fail to consider important grounds for relief? *YES* If so, what grounds?
>
> (2) Did the District Court incorrectly decide the facts? *YES* If so, what facts?
>
> (3) Do you think the District Court applied the wrong law? *YES* If so, what law do you want applied?
>
> (4) Do you feel there are any other reasons why the District Court's judgment was wrong? *YES* If so, what are they?
>
> (5) What action do you want the Court to take in this case?

The only operative questions are numbers (1) and (2). In the brief, the petitioner essentially claimed that as a *pro se* party he should not be held to the strict requirements of pleading conspiracy with specificity, and that the District Court wrongly determined which statute of limitations applied in this cause and at what point

the statute of limitations began to run.

In his petition for a writ of certiorari recently filed with this Court, the petitioner presents two entirely new questions:

> 1. Can the United States District Court for the Western District of Tennessee, Western Division and the United States Court of Appeals for the Sixth Circuit make the acts of a State of Tennessee chancellor judicial acts after the Court of Appeals of Tennessee, Western Section at Jackson ruled that the chancellor lost jurisdiction in the matter?
>
> 2. Does the United States Constitution and 28 U.S.C. § 1654 permit a *pro se* citizen to enter the federal courts if he has presented allegations in his petition that are factual and true?

This Court has long held that it will not consider claims or issues not presented to an intermediate appellate court. *Hudson v. McMillian*, __ *U.S.*__, 112 S. Ct. 995, 1001-1002, 117 L. Ed. 2d 155 (1992); *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 109 S. Ct. 998, 1003, __ L. Ed. 2d __ (1989); *Equal Employment Opportunity Commission v. Federal Labor Relations Authority*, 476 U.S. 19, 106 S. Ct. 1678, 1681, 90 L. Ed. 2d 19 (1986); *Delta Airlines, Inc. v. August*, 450 U.S. 346, 101 S. Ct. 1146, 1155, 67 L. Ed. 2d 287 (1981).

Although the respondent is well aware that the rules of procedure, both on the trial and appellate level, are often not applied as strictly to *pro se* parties, this is not a case in which the petitioner has re-written or edited the questions which were presented before the Court of Appeals. This is an instance in which

wholly new questions are presented for appeal, questions which the Sixth Circuit has not had an opportunity to review or to rule upon.

Furthermore, the questions presented by the petitioner in his petition for a writ of certiorari do not bear upon the grounds on which the dismissal was granted by the District Court, or affirmed by the Court of Appeals. Specifically, the District Court stated in its order, (20a), that the petitioner's complaint failed to state a claim, that the private citizens, including respondent Black, were not state actors within the meaning of 42 U.S.C. § 1983, that the state actors were entitled to immunity, and that the petitioner's 42 U.S.C. §§ 1983 and 1988 claims were barred by the applicable State of Tennessee statute of limitations. The Court of Appeals then affirmed this decision.

Therefore, the petitioner is asking this Court to review questions of law which have never been reviewed by any other court which has considered this case. Furthermore, the petitioner has failed to show any grounds to support his request that these questions should be presented for the first time before this Court.

The respondent would also refer the Court to the appendix contained in the petitioner's petition for a writ of certiorari. It should be noted that neither Appendix H, a personal note to the sheriff from Charles G. Black, nor Appendix I, excerpts from a transcript of a hearing before the Chancery Court of Shelby County, Tennessee, were part of the record presented to the Sixth Circuit. *See* Appellant's Brief, Appellant's Designation of Appendix Contents, 36a-37a.

II.

THE COURT BELOW DID NOT ERR IN DISMISSING PETITIONER ODOM'S *PRO SE* COMPLAINT FOR HIS FAILURE TO STATE A CLAIM, BECAUSE THE PETITIONER FAILED TO PLEAD SPECIFIC FACTUAL ALLEGATIONS TENDING TO SHOW THAT RESPONDENT BLACK CONSPIRED WITH OTHERS ALLEGED TO HAVE BEEN ACTING UNDER COLOR OF STATE LAW FOR THE PURPOSE OF DENYING PETITIONER ODOM'S CIVIL RIGHTS.

In his complaint the petitioner makes numerous conclusory statements regarding respondent Black's participation in the alleged conspiracy:

> A. Defendant Black conspired with defendants Lewis and Robertson for the matter to be assigned to defendant Lewis' Part II of Chancery Court. [9a, ¶ 17]
>
> B. Defendants Black, Walls and Miller wanted this temporary restraining order violated. [9a, ¶ 18]
>
> C. Defendants Black, Walls and Miller wanted plaintiff to be imprisoned to increase the amount of damages they could recover. [9a, ¶ 20]
>
> D. Defendants Black, Walls and Miller wanted plaintiff to be imprisoned. [13a, ¶ 30]

The generally accepted standard for evaluating the sufficiency of a *pro se* litigant's allegations of conspiracy is set out

in *Haines v. Kerner,* 404 U.S. 519, 92 S. Ct. 594, 596, 30 L. Ed. 2d 652 (1972). In *Haines, supra,* at 520, the court held that a *pro se* complaint, "However inartfully pleaded, 'must be held to' less stringent standards than formal pleadings drafted by lawyers . . . ." *A pro* se complaint will, however, be dismissed when it fails to comply with Rule 8 *(A)* (2) of the Federal Rules of Civil Procedure which requires ". . . a short and plain statement of the claim."

Although this Court has not issued a ruling directly on point, all Circuits which have addressed the minimum requirements for pleading a conspiracy in a complaint are in accord. The generally accepted rule is that allegations of conspiracy must be supported by material facts, not merely conclusory statements. *Kunik v. Racine County, Wisconsin,* 946 F.2d 1574, 1580 (7th Cir. 1991); *Young v. Biggers,* 938 F.2d 565, 569 (5th Cir. 1991); *Sanchez v. City of Santa Ana,* 936 F.2d 1027, 1039 (9th Cir. 1990), *cert. denied,* 112 S. Ct. 417; *Polur v. Raffe,* 912 F.2d 52, 56 (2nd Cir. 1990), *cert. denied,* 111 S. Ct. 1389; *Gometz v. Culwell,* 850 F.2d 461, 464 (8th Cir. 1988); *Slotnick v. Garfinkle,* 632 F.2d 163, 165 (lst Cir. 1980); *see Arnold v. Board of Education of Escambia County, Alabama,* 880 F.2d 305, 317 (11th Cir. 1989); *Gutierrez v. Lynch,* 826 F.2d 1534, 1539 (6th Cir. 1987); *Shaare Tefila Congregation v. Cobb,* 785 F.2d 523, 527 (4th Cir. 1986), *rev'd on other grounds,* 481 U.S. 615, 107 S. Ct. 2019, 95 L. Ed. 2d 594; *Benavidez v. Gunnell,* 722 F.2d 615, 618 (10th Cir. 1983).

All of these cases were brought under 42 U.S.C. §§ 1983 and/ or 1985. Only the Third Circuit has failed to rule on this issue in any manner.

Several of the above cases deal with factual situations similar to the facts in the case at hand. In *Young, supra,* the plaintiff had appealed from the District Court's grant of a summary judgment in favor of the defendants on the plaintiff's 42 U.S.C. § 1983 claim. The plaintiff alleged that a judge, prosecutor, witness, police

officers, defense attorneys and others had conspired to convict him unjustly of armed robbery in the State of Mississippi. In reviewing the District Court's finding, the Fifth Circuit dismissed the claims against the judge and the prosecuting attorney because of their judicial immunity, and dismissed the claim against the defense attorneys, because the plaintiff made only conclusory allegations against these defendants regarding the conspiracy. *Young, supra,* at 569.

In *Slotnick, supra,* the plaintiff alleged that six attorneys, two state court judges, a state court clerk, a justice of the peace, the superintendent of the state hospital, and a county sheriff, acting in a conspiracy, intentionally deprived him of rights established under 42 U.S.C. §§ 1983 and 1985. On a motion to dismiss, the judge and the prosecutors were dismissed under the doctrine of judicial immunity, and all other attorneys were dismissed from the action because the complaint failed to present material facts, not merely conclusionary statements, to support the conspiracy claim. The dismissal was granted even though the First Circuit noted that *pro se* complaints are to be read generously. *Slotnick, supra,* at 165.

The facts in the cause at hand are closely analogous to those in *Young, supra,* and *Slotnick, supra.* In his complaint (1a), the petitioner sets forth numerous conclusions from which he draws the inference that respondent Black participated in a conspiracy, along with the other defendants, to deprive him of his civil rights. However, the petitioner states no facts to support his claim that respondent Black had entered into a conspiracy, and that any of respondent Black's actions were intended to deprive the petitioner of his civil rights. This is precisely the reasoning of the District Court, which liberally construed the petitioner's *pro se* pleading, yet found that the petitioner's allegations lacked the requisite factual foundation to support the alleged cause of action (22a).

III.

THE COURT BELOW DID NOT ERR IN DETERMINING THAT THE PETITIONER ODOM'S CLAIMS WERE BARRED BY THE APPLICABLE STATE OF TENNESSEE STATUTE OF LIMITATIONS.

The federal statutes at issue, 42 U.S.C. §§ 1983 and 1985(3) do not contain their own periods of limitation. It is well established that the courts must look to the analogous state statute of limitations to apply to such claims. *Wilson v. Garcia,* 471 U.S. 261, 105 S. Ct. 1938, 1942, 84 L. Ed. 2d 254 (1985); *see Owens v. Okure,* 489 U.S. 189, 109 S. Ct. 573, 577, __ L. Ed. 2d __ (1989). Tenn. Code Ann. § 28-3-104(a), *Personal Tort Actions,* provides that actions brought in tort or under federal civil rights statutes shall be commenced within one year after the cause of action accrues.

The pivotal issue to be determined, therefore, is precisely when the cause of action accrues, thereby triggering the commencement of the statute of limitations. Generally, federal courts have not only adopted the analogous state statute of limitations, *Wilson, supra,* at 1942, but have also adopted the ancillary rules of the states regarding the application of the analogous statute of limitations. *See Board of Regents of the University of the State of New York v. Tomanio,* 446 U.S. 478, 100 S. Ct. 1790, 1795, 64 L. Ed. 2d 440 (1980); *Johnson v. Railway Express Agency, Inc.,* 421 U.S. 454, 95 S. Ct. 1716, 1723, 44 L. Ed. 2d 295 (1975). We must therefore look at the appropriate law of the state in which the cause of action allegedly arose to determine when the statute of limitations begins to run.

In Tennessee, it has long been established that the statute of limitations for a cause of action under a conspiracy claim begins to run from the last overt act of the conspirators, and not when the

injury is first discovered. *Emerson v. Machamer,* 221 Tenn. 739, 431 S.W. 2d 283, 286 (1968); *see Budget Rent-A-Car of Knoxville v. Car Services, Inc.,* 225 Tenn. 342, 469 S.W. 2d 360, 362 (1971).

In his complaint the petitioner states that on November 2, 1987 he was required to pledge additional collateral to secure his appeal to the Tennessee Court of Appeals (13a, ¶ 31). This is clearly the last overt act of the alleged conspiracy, as the acts which occurred after this date dealt with the beginning of the petitioner's incarceration for the contempt charge (13a, ¶ 29), petitioner's filing of a notice of appeal with the Tennessee Court of Appeals (13a, ¶ 31), the ruling of the Tennessee Court of Appeals (14a, ¶ 32) and the filing of a subsequent suit on January 4, 1989 (14a, ¶ 34). The complaint was not filed until February 23, 1989 (1a), well over a year after the last overt act of the alleged conspirators, *i. e.,* November 2, 1987.

Although this Court has always chosen an analogous state statute of limitations, this Court has not always followed that state's ancillary laws on the applications of its statute of limitations. In *Chardon v. Fernandez,* 454 U.S. 6, 102 S. Ct. 28, 29, 70 L. Ed. 2d 6 (1981) the Court held that although the Puerto Rican statute of limitations was to be used as the analogous state statute, the state statute began to run at the time of the discriminating act, not at the point of which the consequences of the act became painful. However, should this Court find that the ruling in *Chardon, ibid.,* applies in this case, the appropriate Tennessee statute of limitations would still bar the petitioner's claim. The last act of the conspiracy still occurred November 2, 1987, more than a year preceding the filing of the complaint.

In fact, the United States District Court, Middle District of Tennessee has previously applied *Chardon, ibid.,* to a 42 U.S.C. § 1983 case in this state. In *Windsor v. A Federal Executive Agency,* 614 F. Supp. 1255, 1263 (M. D. Tenn. 1983), *aff'd,* 767

F.2d 923, the District Court had before it a claim for defamation. The plaintiff in that case argued that the statute of limitations should not begin running until the effect of the conduct ceased to have an effect upon him. The court ruled, however, that both under the laws of Tennessee and under *Chardon, supra,* the statute must begin to run at the time of the alleged wrongful conduct, not at the point when the consequences of such conduct become painful and/or cease. Respondent Black would submit that under Tennessee law, the last "wrongful act" took place on November 2, 1987 when the petitioner was required to pledge additional collateral to secure his right of appeal to the Tennessee Court of Appeals.

CONCLUSION

For all of the foregoing reasons, the judgment of the United States District Court for the Western District of Tennessee, as well as the judgment of the United States Court of Appeals Sixth Circuit, dismissing petitioner Odom's complaint should be affirmed and this appeal dismissed. The petition for a writ of certiorari fails to state a special, important reason for review, pursuant to Rule 10 of the Rules of the Supreme Court of the United States.

Respectfully submitted,

GEORGE S. PETKOFF
Counsel of Record
FRED E. JONES, JR.
PETKOFF AND LANCASTER
Suite 201
305 Washington Ave.
Memphis, TN 38103
(901) 523-1050
Attorneys for Respondent
Charles G. Black

APPENDIX A — COMPLAINT IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION FILED FEBRUARY 23, 1989

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

NO. 89-2183 TUA

WILLIAM N. ODOM, JR.,

Plaintiff,

VS.

GEORGE T. LEWIS, Shelby County Chancellor; CHARLES G. BLACK, Practicing Attorney; J.J. HENRY, Deputy Sheriff; JOHN C. ROBERTSON, Chancery Court Clerk and Master and Special Chancellor; MICHAEL B. VAUGHN; RUBY I. MILLER; LILLIAN V. WALLS; SHELBY COUNTY GOVERNMENT; and STATE OF TENNESSEE GOVERNMENT.

Defendants.

[stamped]
JEROME TURNER
JAMES H. ALLEN

JURY TRIAL DEMANDED

Appendix A

COMPLAINT

Comes now the Plaintiff, William N. Odom, Jr., Pro Se, and in support of his cause of action would state as follows:

1. The Plaintiff is an adult resident citizen of Shelby County, Tennessee and a United States Citizen.

2. The Defendant, George Lewis, is an adult resident of Shelby County, Tennessee, and is a duly elected Chancellor of Chancery Court, Shelby County acting under color of laws of the State of Tennessee, and is charged and vested with the authority for and responsibility of adjudicating matters filed in Chancery Court, Shelby County, Tennessee. He is sued in his official and individual capacities.

3. The Defendant, Charles G. Black, is an adult resident of Shelby County, Tennessee, and is a practicing attorney in the State of Tennessee acting under color of the laws of the State of Tennessee, and is charged as an officer of the Court to represent individuals in matters at law submitting good faith pleading and upholding the laws of the State of Tennessee. He is sued in his official capacity as an officer of the court and in his individual capacity as a practicing attorney.

4. The Defendant, J.J. Henry, is an adult resident citizen of Shelby County, Tennessee and was regularly employed as an officer of the Shelby County Sheriff's Department and at all material times herein was acting under color of law. He is sued individually and in his official capacity.

5. The Defendant, John C. Robertson, is an adult resident citizen of Shelby County, Tennessee and is the duly elected or

appointed Clerk and Master of Chancery Court, Shelby County and an appointed Special Chancellor of Chancery Court, Shelby County, acting under color of the laws of the State of Tennessee, and is charged and vested with the authority of supervising and directing the employees of the Chancery Court Clerk Office. And as a Special Chancellor is charged and vested with the authority for and responsibility of adjudication matters filed in Chancery Court, Shelby County, Tennessee. He is sued in his official and individual capacities.

6. The Defendant, Michael B. Vaughn, is an adult citizen of Orange Park, Clay County, Florida. He is sued generally and in his individual capacity.

7. The Defendant, Ruby I. Miller, is an adult resident citizen of Shelby County, Tennessee. She is sued generally, individually, and in her self-appointed financial trustee of Michael B. Vaughn capacity.

8. The Defendant, Lillian V. Walls, is an adult resident citizen of Shelby County, Tennessee. She is sued generally, individually, and in her self-appointed financial trustee of Michael B. Vaughn capacity.

9. The Defendant, Shelby County Government, is and all times relevant hereto, was a duly organized governmental body existing by virtue of and pursuant to the laws and Constitution of the State of Tennessee. At all relevant times herein, the County oversaw the management and funding of the Shelby County Sheriff's Department and Election Commission, and paid its employees, including J.J. Henry, and is ultimately responsible for the policies and practices, whether written or defacto, of the Sheriff's Department and Election Commission.

Appendix A

10. The Defendant, State of Tennessee Government, is and all times relevant hereto, was a duly organized governmental body existing by virtue of and pursuant to the laws and Constitution of the United States of America. At all relevant times herein, the State oversaw the election of Chancery Court Judges and the election or appointment of Chancery Court Clerks and Masters and the granting of license to attorneys to practice law in the State of Tennessee. That the State paid its Chancellors and Clerks and Masters and is ultimately responsible for its practices and rulings, written or defacto, of the Chancellors and Clerks and Masters. That the State grants license to attorneys and are ultimately responsible for practicing attorneys to uphold the laws of the State of Tennessee.

11. This cause of action is brought pursuant to 42 USC Sections 1983, 1985 and 1988, and the First, Fourth, Sixth and Fourteenth Amendments to the United States Constitution.

12. This Court has jurisdiction over this action based upon 28 USC Sections 1331, 1332 and 1343, as well as the abovesaid statutory and constitutional provisions. The Plaintiff further invokes the pendant jurisdiction of this Court to hear and decide claims arising under state law.

13. The cause of action arose in Shelby County, Tennessee, in the Western District, Western Division of the State of Tennessee, thereby making venue proper pursuant to 28 USC Section 1391(b).

14. As background for his cause of action the Plaintiff would state that prior to August, 1984, Defendants Walls and Miller became the self-appointed financial trustees of Defendant Vaughn. Defendant Walls is Defendant Vaughn's sister and Defendant Miller is Defendant Vaughn's aunt. That on or about August 1, 1984, Defendant Vaughn was 41 years old. He was divorced and the father of four children. Defendant Vaughn was an eleven (11) year veteran

of the U.S. Navy and also had been a patrolman with the Memphis City Police Department for eight (8) years. He resided at Coldwater, Mississippi with three of his four children. That on or about August 1, 1984, Defendant Vaughn was employed by ATS Telephone Systems in Memphis, Tennessee. Prior to August, 1984, Defendant Vaughn had been in both Wage Earner and Bankruptcy.

That on or about August 15, 1984, Defendant Miller purchased a house at 829 Freeman Street, Memphis, Tennessee. Defendant Miller moved Defendant Vaughn and his children into this house. Prior to August 15, 1984, Defendants Vaughn and Walls opened a joint checking account from which to conduct Defendant Vaughn's financial affairs. Defendant Vaughn was to deposit his pay checks into this account with Defendant Walls making disbursements for Defendant Vaughn's debts. From this same checking account Defendant Walls was to pay Defendant Miller the amount of the house note of 829 Freeman Street.

That prior to August, 1984, Defendant Vaughn had borrowed more than Fifteen Thousand Dollars ($15,000.00) from Defendant Miller. Also prior to August, 1984, Defendant Walls had made a loan from her Credit Union for Defendant Vaughn. The amount of the monthly Credit Union note was being paid from the joint checking account of Defendants Walls and Vaughn.

Defendant Vaughn and his children moved into 829 Freeman Street on or about August 20, 1984. This house was located next door to Plaintiff. Shortly after Defendant Vaughn moved next door to Plaintiff he and Plaintiff entered into a homosexual relationship. At about the same time Plaintiff began to pay extra expenses of Defendant Vaughn. Defendant Vaughn's service revolver was in the Pawn Shop and he was about to lose it for non-payment. Defendant Walls was not aware of this obligation. Plaintiff paid the gun out for Defendant Vaughn. From that time until February, 1986, Plaintiff

paid over Ten Thousand Dollars ($10,000.00) on debts and luxuries for Defendant Vaughn and his family. Plaintiff paid for Defendant Vaughn's children's Christmas gifts in 1984. The amount of this Christmas exceeded Five Hundred Dollars ($500.00).

That on or about August 1,1984, Plaintiff had lived at 837 Freeman Street for twenty five (25) years. Plaintiff moved into this house when he was first married. Plaintiff lived with wife and two sons. Shortly after Plaintiff and Defendant Vaughn entered into the homosexual relationship Plaintiff grew to love Defendant Vaughn. Defendant Vaughn told Plaintiff he loved him also. On or about November 14, 1984, Plaintiff told his wife of the relationship. Plaintiff's wife moved out of 837 Freeman Street on or about November 14, 1984.

Defendant Vaughn helped Plaintiff destroy the home of Plaintiff. Plaintiff and Defendant Vaughn moved a piano, a full six-piece bedroom suite, a sofa, a television, a freezer full of food and many smaller items to Defendant Vaughn's house, 829 Freeman Street. Plaintiff gave Defendant Vaughn a notarized bill of sale for these items. Also, Plaintiff gave Defendant Vaughn the signed title to his 1976 Chevrolet.

On or about November 14, 1984, Plaintiff's wife sued for divorce asking for relief in being able to return to her home. Plaintiff moved around the corner to 857 Bowen Circle, another house he owned with his brother and sister. Plaintiff still resides at this address. Plaintiff and Defendant Vaughn continued their homosexual relationship. Plaintiff's wife called Defendant Miller on or about January 1, 1985, asking her to make Defendant Vaughn leave her husband alone.

Defendant Vaughn was a member of the Church of Christ. Plaintiff and his wife were members of the Church of Christ.

Appendix A

Defendant Vaughn placed his membership at the Macon Road Church of Christ, the same church which Plaintiff and his wife had attended for over twenty five (25) years. The Plaintiff's wife and children, the Freeman Street and Bowen Circle neighbors, many members of the Macon Road Church of Christ, and several members of Defendant Vaughn's family knew of the homosexual affair between Plaintiff and Defendant Vaughn. On or about September 30, 1985, Defendant Vaughn's mother, Alice Maxine Dorris, called Plaintiff's wife asking her to quit spreading rumors about her son being gay. Plaintiff's wife told Defendant Vaughn's mother that her son and Plaintiff were, in fact, involved in a homosexual affair.

Defendant Vaughn denied to his family that he and Plaintiff were in such a relationship. The affair continued between Defendant Vaughn and Plaintiff until on or about September 1, 1985, with no problems. On or about that date Defendant Vaughn learned Plaintiff's wife was going to subpoena him as a witness in her divorce proceeding. Defendant Vaughn asked Plaintiff to settle out of court with his wife where he would not be forced to testify about the homosexual relationship. At about the same time Plaintiff and Defendant Vaughn were arguing over Defendant Vaughn volunteering for a Job related school in Kansas. On or about September 1, 1985, as Plaintiff and Defendant Vaughn argued about the divorce matter and Defendant going to school Plaintiff told Defendant Vaughn that if he was asked about the homosexual relationship during the divorce trial that Plaintiff would admit to it. Defendant Vaughn told Plaintiff that he would deny it and it would be Defendant's word against Plaintiff's. On or about September 15, 1985, Defendant Vaughn left for Kansas to attend school. During this three week period Plaintiff and Defendant talked daily. On or about September 20, 1985, Plaintiff taped a conversation between himself and Defendant Vaughn where sexual matters were discussed. Plaintiff told Defendant shortly thereafter that Plaintiff

had made a tape of Plaintiff and Defendant discussing sexual matters.

On or about October 5, 1985, Defendant returned from his schooling. Plaintiff and Defendant continued in their homosexual relationship as it was prior to September 1, 1986. On or about November 9, 1985, Defendant Vaughn asked Plaintiff to buy a computer from a former Navy friend, Bob Gregor, who was then selling computers out of his home. On or about November 9, 1985, Defendant Vaughn and Plaintiff went to Gregor's home where Plaintiff bought a computer to please Defendant Vaughn.

The homosexual relationship between Defendant Vaughn and Plaintiff continued to be peaceful until on or about February 1, 1986. Plaintiff's divorce trial had been scheduled on or about March 1, 1986. Plaintiff and Defendant Vaughn were again arguing about Plaintiff settling out of court with his wife. Defendant Vaughn was served with a subpoena on or about February 10, 1986, to appear as a witness in the divorce trial between Defendant and his wife.

15. That on or about February 1, 1986 Plaintiff had been employed with the United States Postal Service for approximately twenty five (25) years. Plaintiff had considerable amount of funds vested toward the Civil Service Retirement Program. Plaintiff along with his wife owned two houses and Plaintiff had a third interest in another house with his brother and sister. Plaintiff stood to inherit from his 100 year old aunt's estate.

16. On or about February 1, 1986, Defendants Walls and Miller hired Defendant Black to obtain some of Plaintiff's assets in the name of Defendant Vaughn. Defendant Vaughn agreed to let Defendants Walls and Miller sue Plaintiff in his name and also gave them information about his relationship with Plaintiff.

Appendix A

17. On or about February 6, 1986, Defendant Black filed a Complaint For Injunction and requested a Temporary Restraining Order. On or about February 6, 1986, Defendant Black conspired with Defendants Lewis and Robertson for the matter to be assigned to Defendant Lewis' Part 2 of Chancery Court. Defendant Robertson did not act on the Temporary Restraining Order until February 7, 1986.

18. Defendant Lewis approved Defendant Black's request for a Temporary Retraining Order and a fiat was ordered on February 7, 1986. Defendant Black had requested and Defendant Lewis had approved a Temporary Restraining Order which did not conform to the statutes of the State of Tennessee. On or about February 6, 1986, Defendant Black gave written orders for the Sheriff's Department to serve this Temporary Restraining Order upon Plaintiff at his place of employment between the hours of 7:30 a.m and 4 p.m. Defendants Black, Walls and Miller wanted this Temporary Restraining Order violated; they want it served during the business hours of Defendant Vaughn's employer.

19. On February 6, 1986, at or about 2:15 p.m. Plaintiff was called to an office on the main floor of the U.S. Post Office, 555 South Third Street, Memphis, Tennessee. Defendant J.J. Henry served Plaintiff with a Complaint For Injunction. Plaintiff asked Defendant Henry where he signed. Defendant Henry stated that Plaintiff did not sign therefore Plaintiff turned and walked out of office as Defendant Henry started to write on a paper. Defendant Henry never read to Plaintiff or served Plaintiff with a copy of the Temporary Restraining Order. The Temporary Restraining Order was brought to the Plaintiff some fifteen (15) minutes later in a sealed Post Office envelope by Post Office Clerk Carol Diffee.

20. On February 7, 1986, at approximately 2:20 p.m. Plaintiff violated the Temporary Restraining Order. On or about February

19, 1986, Defendant Black submitted an Amended Complaint asking for Plaintiff to be found in Contempt of Court and also asked for two hundred and fifty thousand dollars damages in the name of Defendant Vaughn. Defendants Black, Walls and Miller wanted Plaintiff to be imprisoned to increase the amount of damages they could recover. Defendants Black, Walls and Miller requested unliquidated damages for injury to Defendant Vaughn in the original Complaint For Injunction and set a high dollar amount in the Amended Complaint. Requesting unliquidated damages for injuries to person, property or character, involving unliquidated damages in chancery court violates the statutes of the State of Tennessee.

21. On or about February 20, 1986, Plaintiff through his attorney of record challenged chancery court and Defendant Lewis' jurisdication in the matter. On or about March 27, 1986, Defendant Lewis denied Plaintiff's Motion to Dismiss taking jurisdiction over the matter. On or about April 29, 1986, Plaintiff requested of Defendant Lewis the right to make an interlocutory appeal to the Tennessee Appellate Court in the matter of jurisdiction. Defendant Black in his answer on or about May 15, 1986, requested Defendant Lewis not honor this request based upon theory that "No irreparable injury will result from the denial of the interlocutory Appeal;". On or about May 21, 1986, Defendant Lewis agreed with Defendant Black and the request for an interlocutory appeal was denied.

22. On or about August 1, 1986, Defendant Vaughn had his minister, Paul Eubanks, of the Orange Park Florida Church of Christ write Robert Brown, minister of the Macon Road Church of Christ, Memphis, Tennessee, telling him that Defendant Vaughn thought the suit was wrong and to ask Plaintiff if he would drop his cross complaint against Defendant Vaughn. Defendant Vaughn could not ask Defendant Black to approach attorney for Plaintiff about dropping suit because Defendant Walls and Defendant Miller

had hired Defendant Black and the suit against Plaintiff was theirs. Defendants Walls and Miller did not want the suit dropped.

23. Defendant Vaughn and Plaintiff talked telephonically for approximately two months, August and September, 1986, discussing dropping the lawsuit. Defendant Vaughn told Plaintiff that Defendant Black was to get a third of any damages received from Plaintiff and a half of any damages received if the matter was appealed to a higher court. Defendant Vaughn and Plaintiff agreed to drop lawsuit on or about October 1, 1986. Defendant Vaughn and Plaintiff were to remain friends with Defendant Vaughn living in Florida and Plaintiff remaining in Memphis, Tennessee.

24. On or about October 1, 1986, Defendant Vaughn wrote Defendant Black and Plaintiff wrote his attorney instructing them to drop the lawsuits. On or about October 1, 1986, Defendant Black involved a Tennessee Civil Court Rule requesting a trial date be assigned within ten (10) days. On or about October 1, 1986, Plaintiff's attorney asked defendant Black about letter from Defendant Vaughn requesting Defendant Black drop the lawsuit. Plaintiff's attorney was told by Defendant Black that he had received the letter from Defendant Vaughn but that he and Defendants Walls and Miller did not want to drop the lawsuit.

25. On or about October 1, 1986, Defendant Vaughn quit calling Plaintiff. Plaintiff could not find out from Defendant Vaughn why Defendants Black and Walls would not drop the lawsuit. Plaintiff became aware on or about October 1, 1986 that the lawsuit filed against him was controlled by Defendants Walls, Miller and Black and not by Defendant Vaughn. Defendant Black made in one of his pleadings the statement that Plaintiff attempted to bribe Defendant Vaughn to drop lawsuit. Plaintiff had on or about February 15, 1986, left money on Defendant Vaughn's door at 829 Freeman Street in order that he could pay utility bill therefore not

requiring Defendant Vaughn to move. Defendant Vaughn has testified in a deposition and also in the trial that he did not tell Defendant Black that Plaintiff attempted to bribe him. Defendant Black made statements in his pleading which were not made in good faith. Defendant Black used the courts for himself and Defendants Walls and Miller. Defendant Black did not represent Defendant Vaughn.

26. That on or about October 7, 1986, Plaintiff withdrew his offer to drop his cross complaint and Plaintiff's attorney filed a Notice To Take Deposition of Defendant Vaughn. Shortly thereafter Defendant Vaughn took control of the matter when he learned he must come to Memphis to give a deposition. On or about October 20, 1986, Defendant Vaughn insisted that Defendant Black make the offer to drop the lawsuit if Plaintiff would drop his cross complaint.

27. That on or about October 27, 1986, Plaintiff's attorneys of record, Richard J. Ryan and Richard J. Ryan, Jr., withdrew as Plaintiff's counsel because Plaintiff would not drop his cross complaint. On or about October 30, 1986, Plaintiff notified Defendant Lewis that he would represent himself, Pro Se, in the matter.

28. Trial date for the matter was set for December 8, 1986. Defendant Lewis did not grant Plaintiff a fair trial on that date. Defendant Lewis denied Plaintiff the right to question Defendant Henry concerning service of the Temporary Restraining Order served on February 7, 1986. Defendant Lewis found Plaintiff guilty of outrageous conduct for violating the Temporary Restraining Order and ordered a judgment of Thirty Thousand Dollars ($30,000.00) for Defendants Walls and Miller in the name of Defendant Vaughn. Defendant found Plaintiff guilty of Contempt of Court and sentenced Plaintiff to ten (10) days in the Shelby

County Correctional Center. Defendant Lewis did not address Plaintiffs cross complaint on the day of the trial, December 8, 1986. Defendant Black requested at the trial that Plaintiff be found in Contempt of Court.

29. On January 5, 1987, Plaintiff entered Shelby County Correctional Center and served ten (10) days. The Defendants, and each of them, knew that finding the Plaintiff in Contempt of Court would result in the Plaintiff being incarcerated for an unduly long period of time. As the results of this incarceration Plaintiff was fingerprinted, a "mug shot" taken and he was incarcerated for ten (10) days during which time the Plaintiff suffered embarrassment, humiliation and great mental stress not only because of the incarceration, but because his co-workers, peers and family were aware of his incarceration, and further, that he was in physical danger from other inmates due to the homosexual nature of the matter.

30. That on or about December 8, 1986 Richard J. Ryan, Jr. again became Plaintiff's Attorney of Record. That on or about December 31, 1986, Plaintiff made a motion to Amend Judgment And For Stay Of Jail Time. Defendant Black in his Answer to Defendant's Motion For Amendment Of Judgment asked Defendant Lewis not to stay Plaintiff's jail time. Defendants Black, Walls, and Miller wanted Plaintiff to be imprisoned.

31. That on or about March 16, 1987, Plaintiff filed a Notice of Appeal in the matter. That on or about April 14, 1987, Plaintiff was required by Defendant Robertson, as a Special Chancellor, to give a Deed of Trust to Chancery Court for his property at 857 Bowen Circle in order to have the right to appeal the jurisdiction and judgment of the matter to the Court Of Appeals of Tennessee, Western Section At Jackson. On or about November 2, 1987 Plaintiff was required to pledge additional collateral of Twenty-

Five Thousand dollars ($25,000.00) which represented a partial distribution of his Aunt's estate.

32. On or about February 26, 1988, The Court of Appeals of Tennessee, Western Section At Jackson issued an opinion in the matter. This court reversed the judgment. The court stated:

> "Once an objection has been made, the subject matter jurisdiction is taken away, and the Chancellor *must dismiss* the action."

33. The Court of Appeals of Tennessee, Western Section At Jackson also stated in its opinion that:

> "The Costs of this appeal and in the trial court are taxed to the appellee, for which execution mar issue if necessary.

Defendant Miller paid Plaintiff's attorney for the cost that Plaintiff incurred in making the appeal in this matter.

34. On or about January 4, 1989, Defendants Black, Walls and Miller filed suit in Circuit Court, Shelby County, Tennessee stating the cause of action as the violation of the Temporary Restraining Order. Plaintiff can find an attorney to represent him in the matter in Circuit Court but cannot find an attorney to represent him in the matter before this Court therefore the reason for Plaintiff acting Pro Se in the matter.

35. That the actions of Defendant Henry were taken pursuant to a defacto policy of the Shelby County Sheriff's Department and the Shelby County Government which permitted illegal service of process.

36. That the actions of the Shelby County Election Commission and the Shelby County Government were taken pursuant to a defacto policy of certifying any practicing attorney, not learned in the laws of the State of Tennessee, to run for the position of Chancellor.

37. That the Shelby County Government for a substantial period of time prior to February 7, 1986, knew and approved of the defacto policies which resulted in malicious prosecution, false imprisonment, unfair trial and illegal seizure of property

38. That the actions of the State of Tennessee were taken pursuant to a defacto policy of granting a license to any attorney to practice law in the State of Tennessee. This defacto policy allows the granting of license to attorneys to practice law who do not uphold the laws of the State of Tennessee. That the actions of the State of Tennessee were taken pursuant to a defacto policy of swearing in any attorney duly elected as a Chancellor. This defacto policy allows for attorneys not learned in the laws of the State of Tennessee to serve as Chancellor in the Chancery Court.

39. The actions of the Defendants Lewis, Henry, Black, and Robertson as aforesaid were committed in the course and scope of their employment and under color of law, and directly and proximately caused the above described injuries and losses to the Plaintiff.

40. The actions of the Defendants Black, Vaughn, Miller and Walls as aforesaid were committed as individuals and directly and proximately caused the above described injuries and losses to the Plaintiff. That Defendants Walls and Miller hired Defendant Black who operating under color of laws conspired directly or proximately caused the above described injuries and losses to the

Plaintiff. That Defendant Vaughn allowed his name to be used by Defendants Walls and Miller to hired Defendant Black who operating under color of laws conspired directly or proximately caused the above described injuries and losses to the Plaintiff.

41. Plaintiff reiterates, reaffirms and relies upon each and all the the allegations heretofore set forth and would further show that the Defendants Lewis, Black, Henry and Robertson were acting under color of laws conspired, planned, schemed and acted in concert to deny, violate or otherwise deprive or attempt to deprive the Plaintiff of the rights secured to him by the First, Fourth, Sixth and Fourteenth Amendments of the United States Constitution.

42. Plaintiff reiterates, reaffirms and relies upon each and all off the allegations heretofore set forth and would further show that the Defendants Lewis, Black, Robertson, Vaughn, Miller, and Walls imdividually conspired, planned, schemed and acted in concert to deeny, violate or otherwise deprive or attempt to deprive the Plaintiff off the rights secured to him by the First, Fourth, Sixth and Fourteenth Amendments to the United States Constitution.

43. Plaintiff reiterates, reaffirms and relies upon each and all off the allegations heretofore set forth and would further show that the Defendants Lewis, Black, Henry and Robertson acting under color of laws and Defendants Black, Vaughn, Miller and Walls acting generally and individually did deny, violate or otherwise deprive or attempt to deprive the Plaintiff of the rights secured to him by the First, Fourth, Sixth and Fourteenth Amendments to the United States Constitution, in that they maliciously prosecuted, falsely imprisoned, interfered with his right to a fair trial, illegally seized property and intentionally inflicted emotional distress to the Plaintiff, all of which resulted in losses and damages to the Plaintiff.

Appendix A

WHEREFORE PREMISES CONSIDERED, the Plaintiff respectfully demands the following relief, jointly and severally, against all of the Defendants:

1. That proper process issue upon each of the Defendants requiring them to answer this Complaint.

2. That upon a trial of this cause, Plaintiff be awarded actual and compensatory damages in the amount of Ten Million Dollars ($10,000,000.00).

3. That upon a trial of this cause, Plaintiff be awarded punitive damages in the amount of Fifty Million Dollars ($50,000.000 00)

4. That Plaintiff be awarded costs pursuant to 42 USC 1988.

5. That Plaintiff demands a jury to try the issues herein when joined.

6. For all such other, further and general relief to which the Plaintiff may be entitled in the premises.

Respectfully submitted,

s/ William N. Odom, Jr.
WILLIAM N. ODOM, JR.
857 Bowen Circle
Memphis, TN 38122
(901) 323-2500

APPENDIX B — DEFENDANT CHARLES G. BLACK'S MOTION TO DISMISS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

NO. 89-2183 TUA

WILLIAM N. ODOM, JR.,

Plaintiff,

VS.

GEORGE T. LEWIS, et al.,

Defendants.

DEFENDANT, CHARLES G. BLACK, MOTION TO DISMISS

Comes now the Defendant, Charles G. Black, by and through counsel of record, pursuant to Federal Rule of Civil Procedure 12, and moves this court to dismiss this action. Defendant, Charles G. Black, submits t hat the Plaintiff's Complaint fails to state a claim for which relief can be granted and further, that the Plaintiff's Complaint is barred by the statute of limitations. In support of this motion, the Defendant, Charles G. Black, relies upon the Memorandum filed herein.

PETKOFF, LANCASTER & WALKER

BY: s/ George S. Petkoff
George S. Petkoff #7643
Attorneys for Defendant,
Charles G. Black
Washington Courtyard
305 Washington Avenue
Memphis, Tennessee 38103
(901) 523-1050

Appendix B

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing document was served on all counsel of record by mailing a copy thereof, via U.S. mail, postage prepaid, on this the *19* day of *April*, 1989.

PETKOFF, LANCASTER & WALKER

BY: s/ George S. Petkoff
Attorneys for Defendant,
Charles G. Black

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION ON DEFENDANTS' MOTIONS TO DISMISS

[stamped]
This document entered on docket sheet in compliance with Rule 58 and/or 79 (a) FRCP on 10-4-91.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

NO. 89-2183-TUA

WILLIAM N. ODOM, JR.,

Plaintiff,

VS.

GEORGE T. LEWIS, et al.,

Defendants.

ORDER ON DEFENDANTS' MOTIONS TO DISMISS

In this civil rights action against a Shelby County Chancellor, various court personnel, the Shelby County Government, the State of Tennessee, and three private citizens and their attorney, plaintiff William N. Odom, Jr. alleges the defendants conspired to deprive him of his civil rights in violation of 42 U.S.C. §§ 1983, 1985, and 1988, as well as the First, Fourth, Sixth and Fourteenth Amendments. Plaintiff also alleges he has certain pendent state claims against the parties although he does not specify what such claims might be.

Appendix C

Plaintiff's allegations stem from a state court action initiated by the three individual defendants wherein they sued Odom (the plaintiff in this action) for the tort of outrageous conduct. That action was eventually dismissed on appeal when the Tennessee Court of Appeals ruled that plaintiff's objection to the unliquidated damages claim deprived Chancery Court of jurisdiction.

Presently before the court are four motions to dismiss on various grounds encompassing all the defendants. Among the grounds presented are: insufficiency of process under *Fed. R. Civ. P.* 12(b)(4); failure to state a claim upon which relief can be granted under Rule 12(b)(6); expiration of the applicable statute of limitations; sovereign immunity; judicial immunity; and qualified immunity.

After due consideration of the pleadings and supporting memoranda of law submitted by the parties, the court finds dismissal to be proper for the following reasons. With regard to Chancellor Lewis, the court finds he is entitled to judicial immunity inasmuch as he was acting under state statute within his judicial capacity. All of the acts alleged to have been committed by the Chancellor were judicial acts and were not taken in the clear absence of all jurisdiction. The fact that the Tennessee Court of Appeals eventually agreed with the plaintiff that the lawsuit filed in Chancery Court must be dismissed once a party objects to the trial of such an unliquidated claim in Chancery Court does not require a holding that the Chancellor acted in the clear absence of all jurisdiction. An injunction was sought and the jurisdictional statute, like most statutes, lent room for argument concerning the extent to which it limited jurisdiction.

The State of Tennessee is entitled to sovereign immunity.

Deputy Sheriff J. J. Henry was acting within the scope of his

duties as a court employee and the writ is not alleged to have been invalid on its face; he is entitled to quasi-judicial immunity.

Chancery Court Clerk John C. Robertson is said to have required plaintiff to post a deed of trust to secure his right to appeal. Such conduct does not violate any clearly established constitutional right of the plaintiff and defendant Robertson is entitled to qualified immunity from suit for damages.[1] The complaint that Robertson conspired with the other defendants is totally devoid of any factual statements; it is a wholly conclusory allegation that, by itself, is insufficient to withstand a motion to dismiss. Moreover, as is true with respect to the conclusory allegation of conspiracy against the other defendants, there is no allegation that such conspiracy was formed for the purpose of class-based invidious discrimination. Without such an allegation, the conspiracy claims under 42 U.S.C. § 1985(2) fail. *See Allen v. Allied Plant Maint. Co.*, 636 F. Supp. 1090, 1093 (M.D. Tenn. 1986).

A liberal construction of plaintiff's pro se pleadings reveals that the Shelby County Government has essentially been sued for its supervision of Deputy Sheriff Henry and the Shelby County Election Commission. While plaintiff claims a de facto policy of certifying unlearned lawyers as judicial candidates and "permitting illegal service of process," he makes no specific allegations as to how this policy was arrived at, implemented, or applied to him. Plaintiff thus fails to state a claim in this regard upon which relief can be granted.

Regarding the individual defendants, Michael B. Vaughn, Ruby I. Miller, and Lillian V. Walls, and their attorney Charles G. Black, plaintiff does not allege any facts to show they acted under

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1. The same may also be said with respect to the allegations against Deputy Henry.

color of state law, as is required for a section 1983 action, except insofar as he alleges that they conspired with state actors. However, plaintiff has failed to allege with any specificity how their actions in pursuing a civil state court action constituted a conspiracy. A bare statement that the defendants conspired to infringe the plaintiff's civil rights with no fleshing out of the particulars cannot withstand a motion to dismiss. *See Gutierrez v. Lynch*, 826 F.2d 1534, 1538-39 (6th Cir. 1987); *Barkley v. City of Jackson*, 705 F. Supp. 390, 392 (W.D. Tenn. 1988).

Finally, the court addresses the question of the statute of limitations raised by a number of the defendants. The final act alleged by plaintiff occurred on November 2, 1987 when he posted collateral to secure his right to appeal. This suit was filed on February 23, 1989, and is governed by *Tenn. Code Ann.* § 28-3-104, a one year statute of limitations. Plaintiff argues that his rights were not violated until Chancery Court lost control of the suit when the Tennessee Court of Appeals dismissed the Chancery Court suit in February of 1988. The acts complained of, however, occurred more than one year prior to the filing of this suit and claims that such acts violated plaintiff's civil rights are therefore barred by the statute of limitations.

Absent federal claims upon which federal jurisdiction can be sustained, plaintiff's pendent state claims are not justiciable before this court.

The four motions of the defendants to dismiss are granted and this action is dismissed.

IT IS SO ORDERED this 3rd day October, 1991.

Appendix C

s/ Jerome Turner
JEROME TURNER
UNITED STATES DISTRICT JUDGE

APPENDIX D — APPELLANT'S BRIEF BEFORE THE SIXTH CIRCUIT

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 91-6439

WILLIAM N. ODOM, JR.

Plaintiff - Appellant

V.

GEORGE T. LEWIS; CHARLES G. BLACK; J. J. HENRY; JOHN C. ROBERTSON; MICHAEL B. VAUGHN; RUBY I. MILLER; LILLIAN V. WALLS; SHELBY COUNTY GOVERNMENT; STATE OF TENNESSEE

Defendants - Appellees

APPELLANT'S BRIEF

Pro Se

William N. Odom, Jr.
857 Bowen Circle
Memphis, TN 38122
(901) 323-2500

Appendix D

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 91-6439

WILLIAM N. ODOM, JR.

Plaintiff - Appellant

V.

GEORGE T. LEWIS; CHARLES G. BLACK; J. J. HENRY; JOHN C. ROBERTSON; MICHAEL B. VAUGHN; RUBY I. MILLER; LILLIAN V. WALLS; SHELBY COUNTY GOVERNMENT; STATE OF TENNESSEE

Defendants - Appellees

APPELLANT'S BRIEF

(1) Did the District Court fail to consider important grounds for relief? *YES* if so, what grounds?

The first ground that I feel that the District Court failed to consider in this matter is that Plaintiff is not required to prove his case in his Complaint. I feel that the District Court failed to take into consideration that this matter was filed Pro Se and that the requirements to present a Complaint to the Court are not the same as a Complaint filed by an attorney.

Appendix D

The second ground that I feel the District Court failed to consider is when would the statute of limitations begin to run in an alleged conspiracy of those acting under color of state law or those acting in concert with those acting under color of state law.

The third ground that I feel the District Court failed to consider is that the State of Tennessee was served properly since John Knox Walkup, Ch. Dep. Attorney General, received a copy of the Summons and of the Complaint on March 3, 1989.

The fourth ground that I feel the District Court failed to consider is that the those acting under color of state law or those acting in concert with those acting under color of state law are not entitled to sovereign immunity; judicial immunity; or qualified immunity when there are factual allegations of a conspiracy.

(2) Did the District Court incorrectly decide the facts? *YES* If so, what facts?

The District Court incorrectly decided the fact that the statute of limitations would run only from the time that I spent 10 days in prison. The alleged conspiracy came to an end on February 25, 1988 when the Court of Appeals of Tennessee, Western Section at Jackson, ruled that Defendant Lewis did not have jurisdiction in the matter. The statute of limitations pertaining to all acts of the alleged conspiracy must run from February 25, 1988.

The District Court incorrectly decided that there was not a class-based invidious discrimination allegation in the Complaint therefore without such an allegation, the conspiracy claims under 42 U.S.C. part 1985(2) would fail. The Complaint contains many allegations that the class-based invidious discrimination against the Plaintiff was because of being an admitted bisexual individual

and that the conspiracy was formed for the purpose of class-based invidious discrimination. Also the District Court incorrectly decided the fact that the civil state court action by the three individuals, Michael B. Vaughn, Ruby I. Miller, and Lillian V. Walls and their attorney Charles G. Black, along with those acting under color of state law was for the expressed purpose of a conspiracy to violate Plaintiff's civil rights. The District Court determined that Plaintiff did not flesh out the particulars enough to withstand a motion to dismiss.

The District Court incorrectly decided the fact that the actions of those acting under color of state law along with Defendants Vaughn, Miller, Walls, and Black was not for the purpose of the Plaintiff to violate the Temporary Restraining Order in order to create a civil state action. Without the violation of the Temporary Restraining Order the Defendants Vaughn, Miller, Walls, and Black would not have had an action in civil state court. Furthermore there could not have been a violation of the Temporary Restraining Order without the actions of those acting under color of state law.

The District Court incorrectly decided that the Writ, the Temporary Restraining Order, was valid and that there was not an allegations that it was invalid. There are several allegations in the Complaint as to the Temporary Restraining Order being for the purpose of creating an action in the civil state court and that the Writ was invalid and that it was not served properly.

(3) Do you think the District Court applied the wrong law? *YES* If so, what law do you want applied?

I feel that the District Court applied no laws when it came to the conclusion that none of the acts of those acting under color of state law were part of a conspiracy and that they have judicial immunity,

qualified immunity or quasijudicial immunity.

I would also like the following law applied:

> T.C.A. 8-8-302
>
> Suits against counties for wrongs of deputies.—Anyone incurring any wrong, lnJury, loss, damage or expense resulting from any act or failure to act on the part of any deputy appointed by the sheriff may bring suit against the county in which the sheriff serves; provided, that the deputy is, at the time of such occurrence, acting by virtue of, or under color of his office.

(4) Do you feel that there are any other reasons why the District Court's judgment was wrong: *YES* If so, what are they?

The other reasons I feel that the District Court's judgment was wrong is I have made many factual allegations about the conspiracy of those not acting under color of state law with those acting under color of state law.

I have alleged that the Temporary Restraining Order did not conform to the statutes of the State of Tennessee. I have alleged that Defendant Black gave the deputy sheriff instruction on how and when he want the Temporary Restraining Order delivered.

I have alleged that Defendants Lewis, Black and Robertson conspired to have the matter assigned to Defendant Lewis' court. I have alleged that Defendant Robertson as Clerk of Chancery Court did not act on the Temporary Restraining Order properly and timely.

Appendix D

I alleged that Defendant Robertson had more than an interest in the matter as Clerk of Chancery Court, Shelby County, Tennessee but also was involved as a Special Chancellor acting in Defendant's Lewis place.

I have alleged that the true Plaintiffs in the Complaint and in the request for a Temporary Restraining Order were Defendants Miller and Walls and not Defendant Vaughn. I have alleged that Defendant Vaughn wanted the conspiracy to be over on or about October 1, 1986.

I have alleged that Defendant Lewis, Chancellor, did not allow me a fair trial. I had proof that the Temporary Restraining Order was not read or delivered to me but another postal employee received it with instructions from Defendant Henry to give it to me. I have alleged that Defendant Lewis would not let me question Defendant Henry about the Temporary Restraining Order.

I have alleged that Defendant Lewis lost jurisdiction of the matter but continued in the conspiracy. I have alleged that Lewis' acts were not judicial once his jurisdiction was challenged in the matter. I have alleged that Lewis' actions were not judicial because Tennessee statute specifically instructs Defendant Lewis, as Chancellor of Chancery Court, on how to dispose of a Complaint which request unliquidated damages.

(5) What action do you want the Court to take in this case?

The action I want the Court to take is to find that I have filed a complaint which contains factual allegations of violation of my civil rights under 42 U.S.C., parts 1983, 1985 and 1988 and also the First, Fourth, Sixth and Fourteenth Amendments. That I have stated a cause of action upon which a remedy can be made and that

there is federal jurisdiction and that my state claims are justifiable before the District Court.

I request that this Court remand my case back to the District Court for trial before a jury of my peers.

(6) Do you think that this Court should hear oral argument in this case? *YES* If so, why do you think so?

I think oral argument should be heard concerning the District Court's decision that all acting under color of state law are entitled to either judicial immunity, qualified immunity or quasi-judicial immunity.

Serious factual allegations of a conspiracy to violate my civil rights in order to create an action in a civil state court have been made. The desired results of the alleged conspirators could not have been obtained without the participation of those acting under color of state law.

The District Court has determined all the acts of those acting under color of state are valid and that all acting under color of state law are entitled to some type of immunity.

Also I think oral argument should be heard concerning the District Court's decision that a conspiracy founded for the purpose of classbased invidious discrimination cannot be based upon sexual preference and must fail under 42 U.S.C. part 1985 (2).

(7) Please state if you are requesting leave to proceed without prepayment of filing fees, appointment of counsel, or transcript at government expense.

Appendix D

I am requesting leave to proceed without the appointment of counsel.

Respectfully Submitted,

/s William N. Odom, Jr.
William N. Odom, Jr.
857 Bowen Circle
Memphis, TN 38122

Appendix D

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 91-6439

WILLIAM N. ODOM, JR.

Plaintiff - Appellant

GEORGE T. LEWIS; CHARLES G. BLACK; J. J. HENRY; JOHN C. ROBERTSON; MICHAEL B. VAUGHN; RUBY I. MILLER; LILLIAN V. WALLS; SHELBY COUNTY GOVERNMENT; STATE OF TENNESSEE

Defendants - Appellees

APPELLANT'S DESIGNATION OF
APPENDIX CONTENTS

Appellant, pursuant to Sixth Circuit Rule 11 (b), hereby designates the following filings in the district court's record as items to be included in the joint appendix:

DESCRIPTION OF ENTRY	DATE	RECORD ENTRY NO.
Complaint	2/23/89	1
Notice and Acknowledgement of Receipt of Summons and Complaint	3/17/89	7

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Plaintiff's Response to Defendants Chancellor George T. Lewis's and State of Tennessee's Motion to Dismiss	4/5/89	22
Memorandum of Plaintiff in Support of His Request for Denial of Chancellor George T. Lewis' and State of Tennessee's Motion to Dismiss	4/5/89	23
Response of Plaintiff William N. Odom, Jr. to Defendant Charles G. Black's Motion to Dismiss	5/4/89	40
Memorandum of Plaintiff in Support of His Request for Denial of Charles G. Black's Motion to Dismiss	5/4/89	41
Response of Plaintiff William N. Odom, Jr. to Defendants Michael B. Vaughn's, Ruby I. Miller's and Lillian V. Walls' Motion to Dismiss	5/4/89	42

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Memorandum of Plaintiff in Support of His Request for Denial of Michael B. Vaughn's, Ruby I. Miller's, and Lillian V. Walls' Motion to Dismiss	5/4/89	43
Response of Plaintiff William N. Odom, Jr. to Defendants J. J. Henry's, John C. Robertson's and Shelby County Government's Motion to Dismiss	5/4/89	44
Memorandum of Plaintiff in Support of His Request for Denial of J. J. Henry's, John C. Robertson's and Shelby County Government's Motion to Dismiss	5/4/89	45
Plaintiff's Memorandum in Response to Memorandum of Facts and Law in Support of Defendants Motion to Dismiss of Defendants Lillian V. Walls, Ruby I. Miller and Michael B. Vaughn	6/7/89	47

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Respectfully submitted

s/William N. Odom, Jr.
William N. Odom, Jr.

Appendix D

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of January, 1992, two copies of the foregoing Brief and Joint Appendix Designation were sent via first class mail, postage prepaid, to the following counsel of record:

Mr. William E. Young
Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 37219-5025

Mr. J. Minor Tait, Jr.
Assistant Shelby County Attorney
81 Monroe Avenue, Suite 550
Memphis, TN 38103

George S. Petkoff
305 Washington Avenue, Suite 201
Memphis, TN 38103

Mr. Henry V. Sutton
Mr. Mark W. Garrett
Attorneys at Law
100 N. Main Bldg., Suite 290
Memphis, TN 38103

APPENDIX E — ORDER OF THE SIXTH CIRCUIT AFFIRMING THE TRIAL COURT

No. 91-6439

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WILLIAM N. ODOM, JR.,

Plaintiff-Appellant,

v.

GEORGE T. LEWIS; CHARLES G. BLACK; J.J. HENRY; JOHN C. ROBERTSON; MICHAEL B. VAUGHN; RUBY I. MILLER; LILLIAN V. WALLS; SHELBY COUNTY GOVERNMENT; STATE OF TENNESSEE,

Defendants-Appellees.

ORDER

BEFORE; NELSON, NORRIS and SUHRHEINRICH, Circuit Judges.

William Odom, Jr., a pro se Tennessee citizen, appeals a district court order dismissing his civil rights suit filed pursuant to 42 U.S.C. §§ 1983, 1985, and 1988 for failure to state a claim. This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking monetary relief, Odom sued several private and state

actors, alleging that they had conspired to violate his civil rights. The district court determined that Odom's complaint failed to state a claim, because the private citizens were not state actors within the meaning of 42 U.S.C. § 1983 and the state actors were entitled to immunity. The court also determined that his §§ 1985 and 1988 claims were meritless and all his claims were barred by the statute of limitations. Odom has filed a timely appeal.

Upon review, we conclude that the district court properly determined that Odom failed to state a claim. Construing the complaint in the light most favorable to Odom and accepting his factual allegations as true, we determine that Odom undoubtedly can prove no set of facts in support of his claims that would entitle him to relief. *Dana Corp. v. Blue Cross and Blue Shield,* 900 F.2d 882, 885 (6th Cir. 1990).

Accordingly, we affirm the judgment for the reasons set forth in the district court's order filed on October 4, 1991. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
s/ Leonard Green
Clerk

[stamped]
ISSUED AS MANDATE; 9/1/92
COSTS; No Costs
FILING FEE . . . . . $
PRINTING . . . . . $
TOTAL . . . . . $

A TRUE COPY
Attest:
LEONARD GREEN, Clerk
By s/ Diane Schnur
Deputy Clerk